

Application No. 09/846,654

REMARKS/ARGUMENTS

Rejection under 35 USC § 102(b)

The Examiner has rejected Claims 1-13 and 20 under 35 USC § 102(b) as being anticipated by Trinh et al. (hereinafter "Trinh"), WO 97/34987. As the Examiner is aware, the factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. *Ex parte Levy* 17 USPQ 2d 1461 (BPAI, 1990). The Trinh patent does not teach the presence of delayed blooming perfume ingredients in their disclosure as claimed by the Applicant's. The Applicant respectfully disagrees.

Claim 1 requires an effective amount of a diacyl peroxide-bleaching agent having a particle size of from about 0.1 to about 10 microns wherein at least about 25% of the particles are smaller than 6 microns. Accordingly, it is submitted that the Claim 1, as amended and Claims 2-13 and 20 which depend upon Claim 1, as amended, are not anticipated by Trinh under 35 USC 102, and withdrawal of the rejection on this basis is requested.

Rejection under 35 USC § 103(a)

The Examiner has rejected Claims 14-19 under 35 USC § 103(a) as allegedly obvious over Trinh in view of Painter et al., U.S. Pat. No. 5,763,378 (hereinafter "Painter"). The Examiner asserts that it would have been obvious to incorporate the particulate peroxide compositions of Painter in to the automatic dishwashing detergents of Trinh. The Applicant respectfully disagrees.

According to MPEP 2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970).

In this case, the Examiner's attention is drawn to the fact that Painter discloses a broad diacyl peroxide particle size range of from 1 to 300 microns and a preferred diacyl peroxide particle size range of from 10 to 100 microns. In fact, the only examples provided in Painter disclose diacyl peroxide particle sizes in the range from 53 to 68 microns. It is submitted that the references do not provide "sufficient specificity" in their broad disclosure to constitute anticipation nor obviousness of the present invention even though the Applicant's range was partially disclosed by the references' broad range (e.g. 1 to 300 microns or 1 to 150 microns) since Painter's working examples fall within the preferred range of from 10 to 100 microns.

"The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims...is not, by itself, sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of

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the [Applicant's] specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Manufacturing Co.*, 226 USPQ 438 (PTO Bd. App. 1984).

Furthermore, if it is unclear whether a reference teaches the range with "sufficient specificity," the Examiner must provide reasons for anticipation as well, as a motivational statement regarding obviousness. *Ex parte Lee*, 31 USPQ2d 1105 (Bd. Pat. App. & Int'r. 1993)(expanded Board). Here the Office Action does not discuss motivation regarding the issue of obviousness. It should be noted, however, that neither Painter nor Trinh provide motivation to use diacyl peroxide particles in the range of the Applicant's invention. On the contrary, Painter discloses a preference for particle sizes of 10 microns to 100 microns, which is manifested by the fact that the only examples provided in Painter disclose diacyl peroxide particle sizes in the range from 53 to 68 microns. There is no motivation statement made in the reference to use diacyl peroxide particles in the size range of from about 0.1 to less than 10 microns, especially wherein at least about 25% of the particles are smaller than 6 microns. Thus, while the broad teachings of the Painter patent overlap Applicant's claimed range, the obviousness rejection fails since it is quite clear that Applicant's invention with at least about 25% of the particles being smaller than 6 microns was not in the possession nor contemplated by either Trinh or Painter, alone or in combination.

CONCLUSION

Applicant has made an earnest effort to place the present claims in condition for allowance. WHEREFORE, entry of the amendments provided herewith, reconsideration of the claims as amended in light of the remarks provided, withdrawal of the claims rejections, and allowance of Claims 1-20, as amended, are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned Attorney to discuss any remaining issues.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

Claims 1, 14 and 15 have been amended.

1. (Amended) An automatic dishwashing detergent composition comprising, by weight:
 - (a) from about 0.01% to about 5% of a blooming perfume composition comprising from about 15% to about 60% of blooming perfume ingredients having a boiling point of less than about 260°C and a ClogP of at least about 3, and from about 15% to about 70% of delayed blooming perfume ingredients having a boiling point of less than about 260°C and a ClogP of less than about 3, wherein the weight ratio of blooming perfume ingredients to delayed blooming perfume ingredients is from about 0.25 to about 1.5 and said blooming perfume composition comprises at least about 40% by weight of blooming perfume ingredients and delayed blooming perfume ingredients, and
 - (b) an effective amount of a diacyl peroxide bleaching agent having a particle size of from about 0.1 to about 10 microns wherein at least about 25% of the particles are smaller than 6 microns.
14. The composition according to Claim 1 wherein [the diacyl peroxide bleaching agent has a particle size of from about 0.1 to about 30 microns] at least about 50% of the particles are smaller than 6 microns.
15. The composition according to Claim 14 wherein [the diacyl peroxide bleaching agent has a particle size of from about 1 to about 10 microns] at least about 75% of the particles are smaller than 6 microns.